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Cc: Schroer, Lee[schroer.lee@epa.gov]; Perkins, Erin[Perkins.Erin@epa.gov]; Laidlaw,
Tina[Laidlaw.Tina@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]
From: Janette Brimmer
Sent: Wed 10/5/2016 3:14:10 PM
Subject: RE: Upper Missouri Waterkeeper case...

I guess I do not read the judge's order or comments yesterday as superseding the earlier order. It was my intent to simply prepare the pretrial documents as I customarily do but indicating to the court that it was a record review case and we did not anticipate discovery etc. It was my intention to simply wrap the proposed briefing schedule into those documents for that court as the timing seems to correspond to what the judge would like to see.

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From: Pinkston, Daniel (ENRD) [mailto:Daniel.Pinkston@usdoj.gov]
Sent: Wednesday, October 05, 2016 7:06 AM
To: Janette Brimmer; mstermitz@crowleyfleck.com; Moser, Kurt; chad@bkbh.com
Cc: Schroer, Lee; Perkins, Erin; Laidlaw, Tina; Zomer, Jessica
Subject: Upper Missouri Waterkeeper case...

Counsel:

As you know, the following minute entry was entered in the Upper Missouri case after the call with Judge Morris yesterday:

Docket Text:

MINUTE ENTRY for proceedings held before Judge Brian Morris: **TELEPHONIC STATUS CONFERENCE** held 10/4/2016: Katherine OBrien, Janette K. Brimmer, and Stephanie Tsosie appearing on behalf of Plaintiff; Daniel Pinkston appearing on behalf of Federal Defendants; Mark Stermitz appearing on behalf of Intervenor Defendant Treasure State Resources Association of Montana; Kurt Moser and Sara Bond appearing on behalf of Intervenor Defendant State of Montana Department of Environmental Quality; and, Chad Adams, appearing on behalf of Intervenor Defendant The Montana League of Cities and Towns. This Status Conference is to discuss whether the interests of certain defendants are sufficiently aligned to require the submission of joint briefs. Counsel Pinkston and Brimmer state that another entity will be moving to intervene in this case. Court asks parties whether the present Intervenor are aligned with the EPA. It is the Courts goal is to allow input from as many parties as possible. Pretrial conference is set for November 3rd. The Court will wait until after the pretrial conference before making a final decision on the briefing in this matter. Court asks the Intervenor to file a brief rendition of their position prior to the November 3rd pretrial conference. Court would like the parties to submit a proposed briefing schedule to the Court by late October. Hearing commenced at 2:35 p.m. and concluded at 2:50 p.m. (Court Reporter J. Sampson.) (Law Clerk: B. Hammer), (Hearing held in Charles Pray Courtroom, Great Falls, MT) (SLR,)

Do you read this as superseding the scheduling order he issued on September 15 as it relates to requirements for a Rule 26 meet and confer by October 10, and the October 27 requirements for a discovery plan, preliminary pretrial statement and statement of stipulated facts? I took it that way from the judge's comments about this being an APA administrative record case. I'm interested to know your take on this issue.

Daniel (Dan) Pinkston

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